

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423



RAIL FUEL SURCHARGES

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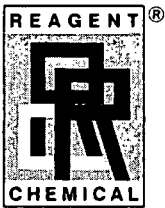
STB Ex Parte No. 661

REPLY OF: Jack T. Skeuse - President
Reagent Chemical & Research, Inc.

TO STB DECISION AND REQUEST FOR COMMENTS,
DATED August 3, 2006

Jack T. Skeuse
Reagent Chemical & Research, Inc.
115 Route 202-31 South
Ringoes, NJ 08551

Dated: September 19, 2006



Reagent Chemical & Research, Inc.

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Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

September 19, 2006

RE: STB Ex Parte No. 661 – Public comments on proposals regarding railroad practices involving fuel surcharges.

Dear Secretary Williams:

On August 3, 2006, the Board announced that it was seeking public comment on several measures the agency proposes to adopt regarding railroad practices involving fuel surcharges. Please find our company's comments on the Board's proposed measures below.

I am the President of Reagent Chemical & Research, Inc., a shipper of Hydrochloric Acid for over 30 years. Reagent Chemical is the largest marketer of Hydrochloric Acid in North America. We ship HCL from 50 different sources to customers and terminals throughout North America. We operate a fleet of over 1,000 privately owned or leased rubber lined tank cars and over 150 privately owned rubber lined tank trucks. We make over 5,000 tank car shipments annually, and have an annual rail transportation budget of over \$20 million.

Reagent Chemical is dependent upon consistent and reliable rail service. We are greatly concerned about the method in which the railroads currently apply fuel surcharges and urge the board to require the railroads to develop and implement a computation more closely linked to the fuel costs attributable to that movement.



INTRODUCTION

We commend the Board for initiating this rulemaking proceeding and for developing the measures set forth in the Decision. The intent of the Decision was very clear however we suggest some minor changes so reporting requirements are not open to misinterpretation. Because we agree with the Board's recommendations, the comments presented herein will focus only on the Board's findings that the current fuel surcharge programs constitute an unreasonable practice, the need for clarification of the reporting requirements, and a request for the Board to develop and establish a process to allow rail customers to seek recourse if the railroads fail to comply with the new guidelines.

THIS RULEMAKING PROCEEDING ADDRESSES AN UNREASONABLE PRACTICE OF APPLYING WHAT THE RAILROADS LABEL A FUEL SURCHARGE IN A MANNER THAT IS NOT LIMITED TO RECOUPING INCREASED FUEL COSTS THAT ARE NOT REFLECTED IN THE BASE RATE.

We agree with the Board's decision that the application of the standard fuel surcharge programs by the railroads constitutes an unreasonable practice. Since 2003, the railroads have been the subject of on-going criticism, because they have profited from fuel surcharges. Numerous studies have been published that revealed the railroads were over-recovering under their fuel surcharge programs and articles have appeared in various trade publications questioning the fairness of the fuel surcharges.¹ While a few of the railroads have announced changes to their programs, others have adopted a take-it-or-leave-it attitude when we attempt to address the impact fuel surcharges have on our transportation costs. The surcharge is a guise to simply increase the railroads profits.

We recognize that Canadian National (CN) and Canadian Pacific (CP) modified their programs which reduced the surcharge levels for their customers; however, since both programs are based on a percentage of the rates, inequities still exist.

The Burlington Northern Santa Fe (BNSF) attempted to move in the right direction by establishing a mileage based program. Reportedly, the BNSF program was rejected by some shippers who believed they were not ready to administer surcharges based on miles, and because the program as presented required further refinement. We agree with the Board's recommendation that the railroads develop a fuel surcharge program based on miles and weight of shipments. Calculation and administration of this formula will not be a concern provided that miles are supplied by the railroads. We share the board's position that the base rates per mile produce surcharges that actually relate to the increase in fuel costs and do not produce surcharges that are a higher percentage of the rate than the current programs.

¹ John Gallagher. "Following the Competition". Traffic World, July 28, 2003, pp. 28 - 29.

THE FUEL SURCHARGE PROGRAMS SHOULD INCLUDE A MECHANISM SO CALCULATION OF INCREASES OR DECREASES IN FUEL COSTS CAN VARY, BASED ON DIFFERENT START DATES.

The railroads initiated the current fuel surcharge programs in October, 2002, that were designed to recover cost increases that had occurred since 2001. The surcharge of October, 2002 was 2.5%. During this same time period, rates have been increased, and new rates have been negotiated, including rates for new moves. (Because the surcharges are based on a percentage of the rates, rate increases also result in increased fuel surcharge revenues for the railroads.)

Fuel surcharges should reflect the change in fuel prices from an established starting point. The railroads have been using the same indexes since and the surcharges have increased to levels as high as 20%. If a new rate is negotiated, especially if there have been no prior movements, prior changes in fuel prices are not relevant, so the shippers and carriers should be able to agree on a starting date and base surcharge, and the fuel surcharges should reflect changes in fuel prices from that point forward.

THE REPORTING REQUIREMENTS PROPOSED BY THE BOARD REQUIRES CLARIFICATION.

The Monthly Report of Fuel Cost, Consumption and Fuel Surcharge Revenues proposed by the Board should give the shippers adequate information to better monitor the railroads' fuel costs and fuel surcharge practices. However, the form does not specify what is to be used to measure the increased or decreased fuel costs in Line 2, *Increased or Decreased Cost of Fuel*. It is unclear if the railroads are required to report increased or decreased costs of fuel since 2001, 2002, the previous month, or some other date? The base starting date for calculating changes in fuel costs needs to be defined.

THE STB SHOULD ESTABLISH A PROCESS TO GIVE SHIPPERS PROTECTION FROM UNREASONABLE PRACTICES THAT MAY OCCUR IN THE FUTURE.

We respectfully request that the Board establish a procedure that will give shippers recourse if railroad(s) fail to comply with the new rules, and the right to challenge surcharges that exceed the incremental changes in fuel costs for the movements to which the surcharges are applied. The process should be simple and user friendly, so it is affordable for all rail customers, including small shippers.

SUMMARY

We agree with the Board's position that the current railroad fuel surcharge programs constitute an unreasonable practice.

We believe there is sufficient evidence that the railroads have been aware that they were over-recovering fuel expenses from some of their customers. Further, we concur with the Board's recommendation, that surcharge programs be developed based on mileage and weight of shipments.

Fuel surcharges should reflect changes in fuel prices from an established starting point.

Fuel cost increases that occurred prior to the effective date of a new rate are not relevant. Further, if there have been no prior movements, prior changes in fuel prices are also not relevant. The carriers' surcharge programs should have the flexibility so shippers and carriers can agree on a base surcharge and the fuel surcharges should reflect changes in fuel prices from that point forward.

The base date for calculating changes in fuel costs must be defined.

With the objective to preclude potential misinterpretation of the reporting requirements proposed by the STB, the base date needs to be defined for the railroads to report changes in the cost of fuel (*refer to Monthly Report of Fuel Cost, Consumption and Fuel Surcharge Revenue, Line 2, Increased or Decreased Cost of Fuel*).

Reagent Chemical appreciates the opportunity to present our views to the Board. We urge the Board to establish fair procedures for assessing fuel surcharges that are based on a single uniform index for measuring fuel costs, from a specific date, with a structure to streamline the resolution of disputes between the railroads and their customers.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "J. Skeuse", written in a cursive style.

Jack T. Skeuse
President